

STATE OF MICHIGAN
COURT OF APPEALS

MARY ELIZABETH VENTURA and BART
VENTURA,

UNPUBLISHED
February 19, 1999

Plaintiffs-Appellants,

v

No. 200232
Wayne Circuit Court
LC No. 96-606061 NZ

OAKWOOD HOSPITAL CORPORATION,
WILLIAM LODGE, KARLENE SICILIANO and
BARBARA HERTZLER,

Defendants-Appellees.

Before: Markman, P.J., and Bandstra and J.F. Kowalski*, JJ.

MEMORANDUM.

Plaintiffs appeal by leave granted an order of the Wayne Circuit Court requiring the parties to arbitrate plaintiffs' claims of wrongful discharge without just cause, age and gender discrimination in violation of the Elliott-Larsen Civil Rights Act, MCL 37.2101 *et seq.*; MSA 3.548(101) *et seq.*, intentional infliction of emotional distress, tortious interference with an employment contract, and defamation. We reverse and remand. This case is being decided without oral argument pursuant to MCR 7.214(E).

An arbitration provision is unenforceable if it is not a binding contract. *Heurtebise v Reliable Business Computers*, 452 Mich 405, 413 (Cavanagh, J.), 438 (Boyle, J., concurring); 550 NW2d 243 (1996); *Stewart v Fairlane Community Mental Health Centre (On Remand)*, 225 Mich App 410, 417; 571 NW2d 542 (1997); accord *Rushton v Meijer, Inc (On Remand)*, 225 Mich App 156, 161; 570 NW2d 271 (1997). An arbitration provision contained in an employee handbook does not create an enforceable arbitration agreement unless the handbook contains language evincing the employer's intent to be bound by the provisions of the handbook. *Heurtebise*, 452 Mich 413-414 (Cavanagh, J.), 438 (Boyle, J., concurring); *Stewart*, 225 Mich App 417-423; *Rushton*, 225 Mich App 161-164.

* Circuit judge, sitting on the Court of Appeals by assignment.

We find that the general disclaimer of any creation of a contract in the hospital's employee handbook is virtually identical, in substance, to the disclaimer provision the Supreme Court relied on in *Heurtebise* to find that the handbook in that case had not created an enforceable arbitration agreement. It is also similar to the disclaimer provision relied on by this Court in *Stewart* to find that the handbook in that case had not created an enforceable arbitration agreement. The disclaimer in the instant case clearly indicates that the content of the handbook is not intended to create terms or conditions of either an expressed or implied employment contract, as did the disclaimers in *Heurtebise* and *Stewart*. Accordingly, the trial court erroneously ordered the parties to submit to arbitration. The order compelling arbitration is vacated.

We observe, however, that the conclusion that defendants did not intend to be bound by the handbook provisions is fatal to plaintiffs' wrongful discharge claim to the extent that plaintiffs assert that the handbook instilled in Mary Ventura a legitimate expectation of just cause employment. *Lytle v Malady (On Rehearing)*, ___ Mich ___; ___ NW2d ___ (1998). Accordingly, on remand, the trial court shall enter summary disposition in favor of defendants on plaintiffs' wrongful discharge claim to the extent that it is based on statements in the handbook.

Reversed and remanded. We do not retain jurisdiction.

/s/ Stephen J. Markman

/s/ Richard A. Bandstra

/s/ John F. Kowalski